



Institute for Development
of Freedom of Information

Legal and Practical Challenges of Accessing Archival Documents in Georgia

The case of IDFI v. National Archives of Georgia
and
the Legislative Proposal of IDFI

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December, 2019



Structure

Right to information as a tool of self-determination

Case of IDFI v. National Archives of Georgia

Reason for the appeal

Aim of the strategic litigation

The Court decision

Problems at the National Archives of Georgia

Legislative Proposal of IDFI

Personal data

State secrecy

Procedural problems



Right to Information as a Tool of Self-Determination

Kenedi v. Hungary

Refusal to access to archival documents is an interference with the right to receive information and is not justified in a democratic society. States should ensure access to original documentary sources for legitimate historical research for the effective exercise of the freedom of expression.

Vision of IDFI

Informed and empowered society for democratic governance!

Origins

Historical studies and access to archives.

Development

Access to Information and Good Governance



Case of IDFI v. National Archives of Georgia

Scholars, students, historians facing problems accessing archival funds

During the course of the past two years, multiple individuals stated that they were not granted access to the reading hall of the National Archives of Georgia and they did not receive any justification for the refusal.

Aim of the strategic litigation

Studying the scope of the problem.

Requested information

The number of applications received by the National Archives of Georgia and relevant decisions taken.

Reason for the refusal

The National Archives of Georgia does not process **complete** information on the application received and relevant decisions taken.



Case of IDFI v. National Archives of Georgia

The Court decision

The information requested by the IDFI did not include closed public information prescribed by the Georgian legislation, i.e., state or commercial secrecy or personal data.

„The National Archives has the obligation to disclose the information based on the data stored at the entity. The argument that the National Archives of Georgia did not systematically record received application and relevant decisions could not be used as a valid justification for refusing to disclose the information.“





Case of IDFI v. National Archives of Georgia

Importance



The court ordered the administrative body to create and disclose statistical data;



The Court stressed that public access to archival documents was of utmost importance in a democratic society; And



The practice of systematic breach of legislation (General Administrative Code of Georgia) was revealed in the National Archives of Georgia.



Existing Problems at the National Archives of Georgia

Failure to respond to the FOI request

The delay of four months after the National Archives of Georgia was informed that a complaint was filed against it at the Court.

Failure to systematically record received applications and relevant decisions

According to the respondent party, the National Archives of Georgia did not have a formalized, structured system of recording and storing received applications.



Existing Problems at the National Archives of Georgia

Violation of the obligation to issue decisions on the refusal to grant access to the Archival funds in written form

General Administrative Code of Georgia (51.2)

“ if a decision of an administrative body restricts the legal rights of a person, it shall be issued in writing within the period of three days.”

Decisions on refusing access to the archival funds are issued in writing when applicants themselves request to be provided with written refusals.



Existing Problems at the National Archives of Georgia

Failure to inform applicants of their right to appeal and relevant procedures

General Administrative Code of Georgia (52.2)

“each decision of an administrative body restricting legitimate rights of a person, must include information on the appeal procedures, the title of the entity where an appeal can be filed, its address and the deadline for filing an appeal.”

Applicants are not given clarification on the rules and procedures of the appeal



Legislative Proposal of IDFI

Problem: Personal Data

Access is granted if the period of 75 years has passed since a document was created.



A vast selection of documents describing pivotal historical events/periods taking place after 1944 are not accessible.

Access is granted if the subject of personal data has descended more than 30 years ago – a death certificate has to be submitted by an applicant



Applicants have in practice faced this problem, when they were directed by the National Archives of Georgia to submit death certificates of hundreds of persons in order to be granted access to historical documents.



Legislative Proposal of IDFI

Sulston: Personal Data

Based on the legislative proposal submitted by IDFI, access to archival documents containing personal data should be granted if:



There is well-substantiated research or scientific purpose;

and/or



There is public interest towards the information.



Legislative Proposal of IDFI

Problem: State Secrecy

Access to archival documents containing state secrecy can only be granted after the documents are declassified.

Based on the law of Georgia on State Secrets depending on the level of secrecy documents can be declassified in 3, 5, 10 or 20 years after their creation. However, under well-substantiated research or scientific need an applicant can be granted access to view documents of state secrecy before their declassification.



No exceptions foreseen by the Law of Georgia on National Archives.

Sulston: Granting access to archival documents containing state secrecy if there is well-substantiated research or scientific purpose;



Legislative Proposal of IDFI

Problem: Ban on photocopying documents



Unnecessary bureaucracy - an applicant who is reviewing a document has to submit a request on receiving a photocopy, pay a fee and wait before receiving copies of the documents.

Income received by the national Archives of Georgia from this service is insignificant - ca. 20,000 – 30,000 Gel annually.


Sulston: eliminating fees on photocopying archival documents



Legislative Proposal of IDFI

Problem: Lengthy procedures

Unreasonably long time frames for granting access to archival documents

 National Archives of Georgia is given the period of 5 days to decide whether to grant or deny access to a requested document, after which the institution is given additional 4 days to prepare the document and grant access to it.

Sulston: Granting access to archival documents no later than the following day from registering a request.



Legislative Proposal of IDFI

Problem: No information on the documents under maintenance



No obligation to make the list of documents under maintenance publicly available. Lack of public scrutiny.

Sulston: Introduce obligation of the institutions holding archival documents to proactively publish the list of documents under maintenance.

Placing obligation on public institutions to publish the list of the documents under maintenance will increase the transparency of the institutions and avoid the risk of deceptively referring to the argument of document maintenance.

IDFI

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